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ABSTRACT

This booklet is the result of an analysis of the federal statutory scheme dealing with equal rights for women in education, as well as a preliminary analysis of areas of concern not covered by federal regulations. The analysis probes the extensive detail of the federal statutory framework, especially the interpretive materials. It synthesizes and distills the various federal materials into one coherent topical outline of comprehensive scope that indicates the substantive areas of coverage of the federal materials, with citations showing the areas in which elements of the federal scheme overlap. Additions are included that are derived from actual or proposed official actions in some of the states or from suggestions contained in publications of women's groups or state commissions concerned with sex discrimination. (Author/MLF)

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Digest of Federal Laws: Equal Rights for Women in Education

Report Number 61
From the Equal Rights for Women
in Education Project
Ford Foundation Grant

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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Education Commission of the States
Denver, Colorado 80203
Wendell H. Pierce, Executive Director

March 1975

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Paula Herzmark
Project Director
Equal Rights for Women in
Education



Education Commission of the States



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The Education Commission of the States is a nonprofit organization formed by interstate compact in 1966. Forty-five states, Puerto Rico and the Virgin Islands are now members. Its goal is to further a working relationship among governors, state legislators and educators for the improvement of education. This report is an outcome of one of many Commission undertakings at all levels of education. The Commission offices are located at 300 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203.

INTRODUCTION

In August, 1974, the Equal Rights for Women in Education Project, funded by the Ford Foundation through the Education Commission of the States (ECS), set out to collect state-by-state data on laws, executive orders, regulations, guidelines, administrative structures and procedures affecting equal rights for women in education as federally required. Preparatory to that task, however, it was necessary to determine what is federally required. The following are the results of an analysis by ECS of the federal statutory scheme dealing with equal rights for women in education, as well as a preliminary analysis of areas of concern not covered in the existing federal scheme.

At the onset of the investigation, four federal acts and one executive order constituted the federal stake in enforcing equal rights for women in education (along with the interpretive materials pursuant to the acts and the order). Though Sections 1983 and 1985 of the U. S. Code and the 14th and 15th Amendments to the Constitution are germane to our investigation, this project was not funded to explore the specific applicability of these broad provisions to women's rights. Since then, of course, Congress has passed S.2518, the Women's Education Equity Act, introduced by Representative Patsy Mink in 1973. This bill contained numerous provisions not covered in the previous federal scheme. Its key elements have been incorporated in the section of the report describing relevant issues not included in the federal statutory scheme.

The analysis presented in this publication is unique. While other groups have published summaries of the key federal provisions that deal with eliminating sex discrimination in education, these summaries did not probe the extensive detail of the federal statutory framework, especially the interpretive materials. Moreover, the existing summaries of federal materials are not organized to permit comparison between federal and state schemes affecting women in education. For these reasons, ECS has conducted an exhaustive content analysis of the four federal laws and the one executive order dealing with equal rights for women and a similar analysis of all the interpretive materials designed to implement the laws and the order. These analyses are set out in the federal statutory scheme.

In addition, this report synthesizes and distills the various federal materials into one coherent topical outline of comprehensive scope. This outline, contained in "Relevant Provisions of the Federal Statutory Scheme and Supportive Regulations," indicates the substantive areas of coverage of the federal materials with citations showing the areas in which elements of the federal scheme overlap.

Since the federal scheme does not include a number of provisions regarded as emergent tendencies in the national effort to provide equal rights for women in education, ECS has included these in a section entitled "Relevant Issues Not Covered in the Federal Statutory Scheme and Supporting Regulations." With the exception of S.2518, the Women's Education Equity Act, these are derived from actual or proposed official actions in some of the states that have been active in adopting procedures to ensure equal rights for women in education (e.g., the 1972 policy statement of the Minnesota Board of Education, "Eliminating Sex Bias in Education"). Others derive from suggestions contained in publications of women's groups or state commissions concerned with sex discrimination (e.g., the 1974 Root Report from the State of Washington). Together, these additions round out what the federal scheme may become.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED
BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT
OF 1972

COVERAGE: The Civil Rights Act of 1964 was effective March 24, 1972, for all educational institutions with 25 or more employees; March 24, 1973, for educational institutions with 15 to 24 employees. Excluded from coverage are religious educational institutions with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such institution of its activities.

PURPOSE: The act prevents discrimination because of sex (also race, color, religion and national origin).

SUBSTANTIVE PROVISIONS

Sec. 703(a)(1) prohibits any employer in an educational institution from failing or refusing to hire, discharging or "otherwise discriminating" against any individual with respect to his/her compensation, terms, conditions or privileges of employment...on the basis of sex.

Sec. 703(a)(2) prevents any employer in an educational institution from segregating, limiting or classifying employees or applicants for employment on the basis of sex so as to adversely affect said employees' or applicants' employment opportunities.

Sec. 703(b) prohibits any employment agency from discriminating on the basis of sex.

Sec. 703(c) applies the prohibitions of Sec. 703(a)(1) and (2), supra, to "labor organizations" defined (Sec.710(d)) to include any employee representation committee which exists for the purpose of dealing with employers concerning disputes, wages, hours and so forth.

Sec.704(a) prohibits discrimination against any employee or applicant for employment who opposes practices made unlawful by the Act.

ENFORCEMENT: By Equal Employment Opportunity Commission (EEOC)(per Secs. 705-706).

INTERPRETATION: To date interpretations are stated in the "Guidelines on Discrimination Because of Sex," 29 Code of Federal Regulations (CFR) Sec. 1604 (1972), and "Guidelines on Employee Selection Procedures," 35 Federal Regulations 12333 (1970).

29 CFR Sec. 1604 (1972)

Sec. 1604.1 (a)(1) states that the following are deemed to violate the prohibitions of Title VII:

(1) The refusal to hire a woman on the assumptions regarding comparative employment characteristics of women; for example, that the turnover among women is greater than among men

(2) The refusal to hire an individual based on stereotyped characterizations of the sexes, such as, that women are less capable of aggressive salesmanship

(3) The refusal to hire an individual because of preferences of coworkers, the employer, clients or customers.

Sec. 1604.1 (b)(1) states that laws which discriminate against women in employment in any of the following ways are unlawful under and superseded by Title VII: by providing employment for females in certain occupations, by requiring lifting or carrying of weights in certain jobs, by limiting employment of females to certain daytime hours or for only a certain number of hours or days per week or for certain periods of time before or after childbirth.

Sec. 1604.1 (b)(2) states that laws which discriminate as to minors of one sex versus minors of the other sex are in conflict with Title VII.

Sec. 1604.1 (b)(3) makes it unlawful for an employer to refuse to hire or otherwise discriminate to avoid paying minimum wages or overtime.

Sec. 1604.1 (b)(4) makes unlawful sex-oriented state employment laws which provide benefits, for example, rest periods, to one sex only. Employers will be deemed in violation of Title VII if they refuse to hire in order to avoid provision of such benefits.

Sec. 1604.1 (b)(5) states that an employer is in violation of Title VII if he discriminates or refuses to hire on ground, that state law require separate restrooms for the sexes and he (the employer) is seeking to avoid provision of such separate rest rooms.

Sec. 1604.3 (a) makes it unlawful for an employer to classify jobs as "male or female" unless sex is a bona fide occupational qualification (BFOQ).

Sec. 1604.3 (b) makes unlawful a seniority system or line of progression which distinguishes "light" or "heavy" jobs as a disguised form of sex classification.

Sec. 1604.4 (a) states that a rule that forbids or restricts the employment of married women that is not also applicable to married men is a form of discrimination based on sex prohibited by Title VII.

Sec. 1604.5 states that help-wanted advertisements may not indicate sex preferences or limitations unless sex is a BFOQ.

Sec. 1604.6 states that employment agencies (private) dealing with one sex exclusively are involved in an unlawful discriminatory practice.

Sec. 1604.7 provides that a preemployment inquiry may ask "male/female" or "Mr./Mrs./ Miss" if the inquiry is in good faith and for a nondiscriminatory purpose.

Sec. 1604.9 makes it unlawful for an employer to discriminate between men and women with regard to "fringe benefits" (including medical, hospital, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and "other terms, conditions, and privileges of employment"). This means benefits conditioned on "head of household" or "principal wage earner" status are prima facie violations of the act. It also means benefits to spouses of employees must be available whether the employee is male or female and it means female employees may not be deprived of benefits available to female spouses of male employees; for example, maternity benefits. Also differential retirement ages may not be based on sex.

Sec. 1604.10 (a) states that a written or unwritten employment policy which excludes employees or applicants because of pregnancy is prima facie unlawful under Title VII.

Sec. 1604.10 (b) provides that disabilities arising from child-birth, pregnancy, abortion or miscarriage shall be treated by employers in all respects like other temporary disabilities.

35 Federal Regulations 12333 (1970)

Sec. 1607.3 states that the use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII constitutes discrimination unless (1) the test has been validated or evidences a high degree of utility... and (2) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

EQUAL PAY ACT OF 1963 AS AMENDED BY EDUCATION AMENDMENTS OF 1972

COVERAGE: The Equal Pay Act covers all employees in all private and public educational institutions at all levels, effective July, 1973. It includes: preschool, elementary, secondary and institutions of higher education, regardless of whether or not the institution is receiving federal funds.

PURPOSE: The act requires that men and women (or employees of different races, and so on) performing work in the same establishment under similar conditions receive the same pay if their jobs require equal skill, effort and responsibility. "Equal" does not mean "identical," but jobs compared under the act must be "substantially similar."

INTERPRETATION AND IMPLEMENTATION: The Wage and Hour Division of the U. S. Department of Labor has established two sets of regulations: (1) "Equal Pay for Equal Work," 29 CFR Part 800 (1971) and (2) "Extension of Equal Pay Provisions to Formerly Exempted Employees," 29 CFR Part 541 (1973). Summaries of these two sets of regulations follow:

29 CFR Part 800 deals primarily with application of Sec. 6(d) of the 1963 act before the 1972 amendments. It is to be noted that Sec. 6(d)(2) of the act prohibits a labor organization representing employees of an employer having employees subject to the minimum wage provisions of Sec. 6 from engaging in acts that cause or attempt to cause the employer to discriminate against an employee in violation of the equal pay provisions.

Sec. 800.114 deals with wage classification systems. Such systems, if they designate certain jobs as "female" and "male" frequently indicate a pay practice which discriminates on the basis of sex and raise "serious questions."

Sec. 800.115 deals with discriminatory "patterns" of wage payments. Situations will be "carefully scrutinized" where employees of only one sex are concentrated in the lower grades of the wage scale and where there does not appear to be any material relationship other than sex between the lower wage rates paid such employees and the higher rates paid employees of the opposite sex.

Sec. 800.116 deals with particular situations:

(a) Overtime: A prohibited wage differential is being paid when men and women receive the same straight-time rates but the men receive an overtime premium rate of twice the straight-time rate while women receive only one and one-half times the straight-time rate for overtime.

(b) Special assignments: Employees who are assigned a different and unrelated task to be performed outside the regular workday may under certain circumstances be paid at a different rate of pay for time spent in performing such additional duties.

(c) Vacation or holiday pay: No differentials based on sex are permissible.

(d) Contributions to employee benefit plans: No violation of Sec. 6(d) will be presumed in two cases: (1) the employer makes equal contributions for all employees regardless of unequal benefits; (2) benefits are equal for all employees regardless of unequal contributions by the employer.

(e) Commissions: Differential payment of commissions are permissible as long as they are based on quality and grade of merchandise rather than sex.

Sec. 800.119-126 elaborates on the "equal work on jobs" concept of the act defined by the equality of the "skill, effort and responsibility" required.

Sec. 800.125 elaborates on the "equal effort" standard. "Effort is concerned with measurement of the physical or mental exertion needed for the performance of a job."

Sec. 800.129 speaks to the "equal responsibility" standard. "Responsibility is concerned with the degree of accountability required for the performance of the job, with emphasis on the importance of the job obligation."

The sole purpose of 29 CFR Part 541 is to clarify the meaning of the terms, "bona fide executive, administrative and professional employees." The significance of the terms lies in the Education Amendments of 1972. These amendments brought the designated category of employees within the equal pay provisions of the 1963 Equal Pay Act. However, such employees will still remain outside the coverage of the minimum wage and overtime pay provisions of the Fair Labor Standards Act.

PART II OF EXECUTIVE ORDER 11246 AS AMENDED BY EXECUTIVE ORDER 11375

COVERAGE: Executive Order 11246 became effective October 13, 1968, and covers all educational institutions with federal contracts over \$10,000.

PURPOSE: The order prevents employment discrimination based on sex (and race and so on).

SUBSTANTIVE PROVISIONS: Most provisions are contained in Sec. 202. This section requires all government contracting agencies to include in every government contract the following provisions:

(1) The contractor will not discriminate against any employee or applicant because of sex, race and so on.

(2) The contractor will take affirmative action to ensure that applicants are employed and employees treated without regard to sex, race and so on. Such affirmative action shall include but not be limited to:

- (a) Employment
- (b) Upgrading
- (c) Demotion or transfer
- (d) Recruitment or recruitment advertising
- (e) Layoff or termination
- (f) Rates of pay or other forms of compensation
- (g) Selection for training, including apprenticeship.

(3) The contractor shall, in all advertisements and solicitations for employees, state that all qualified applicants will be considered, regardless of sex, race and so on.

(4) The contractor will advise each labor union with which he has a collective bargaining agreement of his other commitments under this section.

INTERPRETATION AND IMPLEMENTATION OF EXECUTIVE ORDER 11375: The requirements of the executive order are implemented by regulations of the Department of Labor (41 Code of Federal Regulations Chapter 60). However, more practical interpretive materials involving education appear in "Higher Education Guidelines Pursuant to Executive Order 11246," October 1, 1972, published by the Office of the Secretary, Office for Civil Rights, HEW. Relevant provisions of the interpretive regulations and guidelines are set out below.

41 CFR Part 60-1

Sec. 60-1.8 requires prime and subcontractors to ensure that facilities for employees are provided in such a manner that segregation by sex, race and so on cannot result, either by policy or by custom. Facilities in this section mean waiting rooms, work areas, restaurants, time clocks, restrooms, storage or dressing rooms, parking lots, drinking fountains, recreation rooms, transportation and housing facilities provided for employees.

Sec. 60-1.40 requires government contracting agencies to require prime contractors with 50 or more employees or a contract of \$50,000 or more (and similarly each prime contractor shall require each subcontractor meeting the 50 people or \$50,000 test) to develop a written affirmative action compliance program for each of its establishments (see Revised Order No. 4, *infra*).

Secs. 60-1.41 and 60-1.42 specify language for use by employers in soliciting employment and posting notices of compliance with the executive order.

Revised Order No. 4, 41 CFR Part 60-2

The requirement of a written affirmative action plan has been made applicable to public institutions (those under local or state control). The affirmative action requirements of this part apply to women and minorities. In brief, affirmative action as required in this part necessitates that the contractor:

(1) Determine whether women are being "underutilized" in any job classification in accordance with objective criteria set out in Sec. 60-2.11(a)(2)(i)-(viii)

(2) Set good faith, reasonable goals and timetables in accordance with Sec. 60-2.12.

U. S. Department of Health Education and Welfare (HEW) Higher Education Guidelines

These HEW guidelines set out modes of compliance with Executive Order 11246 acceptable to Office for Civil Rights (OCR) and HEW: they are geared for all universities and colleges with federal contracts. Below is a brief summary of key elements of these guidelines in the area of personnel policy.

(1) Recruitment: Universities are advised to avoid narrowing the field of potential females who may fit any job description. Ten methods of recruitment are suggested as "fruitful." These are:

(a) Advertisements in appropriate professional journals and job registries

(b) Unsolicited applications or inquiries

(c) Women teaching at predominantly women's colleges and minorities teaching at predominantly minority colleges

(d) Minorities or women professionally engaged in nonacademic positions, such as industry, government, law firms, hospitals

(e) Professional women and minorities working at independent research institutions and libraries

(f) Professional minorities and women who have received significant grants or professional recognition

(g) Women and minorities already at the institution and elsewhere working in research or other capacities not on the academic ladder

(h) Minority and women doctoral recipients (from the contractor's own institution and from other institutions) who are not presently using their professional training

(i) Women and minorities presently candidates for graduate degrees at the institution and elsewhere who show promise of outstanding achievement (some institutions have developed programs for support for completion of doctoral programs with a related possibility of future appointment.)

(j) Minorities and women listed in relevant professional files, registries and data banks, including those which have made a particularly conscientious effort to locate women and minority persons.

(2) Hiring: Decisions must be guided by procedures designed to ensure nondiscrimination. There must be:

(a) No differential treatment in professional rank based on sex

(b) No presumptions about an applicant's ability to relocate based on sex

(c) No discrimination based on sex disguised as a policy of a university regarding employment of its own graduates

(d) No "reverse discrimination."

(3) Anti-nepotism policies: Such policies, whether stated or implied, are unlawful if their effect is to favor men over women in employment opportunity.

(4) Placement, job classification and assignment: Job classification must reflect true differences in actual duties performed and not merely differences in the race, sex, color, religion or national origin of persons performing these duties. Where such separate classifications are not justified, they must be merged or eliminated. In academic settings, sex- and minority-segregated classifications as "lecturer" and "research associate" must be done away with and persons compensated for the assignment of such labels.

(5) Training: Remedial job training and work-study programs aimed at improving specific skills should be provided to ensure equal opportunity in promotion. This applies to the employment of students as well as other employees.

(6) Promotion: All efforts should be made to ensure women and minorities equal opportunities in promotion, including means specified in Training, supra.

(7) Termination: Discriminatory termination involves termination which has a disproportionate effect upon women and cannot be due to reasons unrelated to sex, race, religion and national origin. Seniority can be used as a standard for termination except where discrimination has been a basis of seniority.

(8) Conditions of work: The executive order forbids all practices and policies which differentiate work assignments, facilities, research opportunities, teaching loads and so on, on the basis of sex or minority status. Nor can faculty clubs or dining halls be denied to minorities or members of one sex.

(9) Rights and benefits - salary: Pay must be based on capability and performance and not former salary or external market factors. An institution must put forth a set of criteria for determining salary for each job classification.

(10) Back pay: Evidence of discrimination requires back pay as a remedy in all universities (along with other employers covered under other statutes).

(11) Leave policies: No discrimination is permitted in granting of leaves for any purposes.

(12) Employment policies relating to pregnancy and childbirth: Regardless of marital status, pregnancy and childbirth must be considered as a justification for a leave of absence for a reasonable length of time.

(a) Eligibility: Whether the employer has a leave policy or not, childbearing merits a leave of absence for all female employees.

(b) Mandatory period of leave: Mandatory leaves must be based on medical or job characteristics and the length of all leaves (mandatory or voluntary) must be based on a medical need related to pregnancy and childbearing.

(c) Eligibility for and conditions of return: Return from a leave due to childbearing must not involve loss of pay or benefits.

(d) Other conditions of leave: Department of Labor guidelines require all pregnancy leaves to be conducted in accordance with general leave policies of an employer.

(e) Child care leaves: Leaves for child care should be available for men and women alike if the employer permits leaves for other personal reasons. Such leaves should not be subtracted from a stated term of appointment.

(13) Fringe benefits: Benefits such as medical, hospital, accident and life insurance, retirement benefits, profit-sharing, bonus plans and leave must be administered without discrimination. This precludes different retirement ages for men and women or benefits based on being head of household. However, different benefits for men and women are tolerated if the employer's contributions for both sexes are equal and it is permissible for an employer to contribute more to one sex than another in seeking to equalize benefits for men and women.

(14) Child care: The establishment of child care programs for male and female employees as well as students is applauded.

(15) Grievance procedures: Individual complaints of discrimination will be handled by the Equal Employment Opportunity Commission (EEOC), while class complaints or evidence of institutional patterns of discrimination will be investigated by the Office for Civil Rights (OCR). It is urged that grievance procedures be developed for all employees, academic and nonacademic alike, and these procedures should be known to all employees.

Sec. 60-3.4 requires that where technically feasible, tests that are used as a basis for any employment decision be shown to be validly predictive of job performance for each majority or minority group with which it is used. Evidence of a test's validity consists of empirical data demonstrating that the test is correlated with important elements of work behavior relevant to the job or jobs for which candidates are being evaluated. Attainment or performance at a higher level job is only a relevant criterion of test validity when there is a high probability that persons employed will progress to a higher level position within a reasonable period of time. Evidence of test validity obtained in one unit of a multi-unit organization or in one company within a single industry may be applied to other units and/or companies provided that no significant differences exist between companies, units, jobs and applicant populations. For the purposes of this order, test is defined as any paper-and-pencil or performance measure used as a basis for any employment decision.

Sec. 60-3.5 requires that empirical evidence of test validity conform to generally accepted statistical procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals," published by the American Psychological Association. Minimum standards which must be met in the research approach and in the presentation of results which constitute validity include the following:

- (1) A sample of subjects representative of the normal or typical candidates for the job(s) in question
- (2) The administration and scoring of tests under controlled and standardized conditions
- (3) A full description of work behaviors or other criteria of employee adequacy which the test is intended to predict or identify
- (4) The examination of all evaluation and rating techniques to ensure freedom from bias and other factors which would unfairly depress the scores of minority groups or women
- (5) The analysis and report of results separately for each minority and majority group.

Sec. 60-3.5 also outlines considerations which are to feature in assessing the utility of a test, including the demonstration of a statistically significant relationship between the test and at least one relevant criterion, and a variety of matters pertaining to the practical significance of the relationship between the test and criterion.

Sec. 60-3.13 prohibits the use of selection techniques in addition to tests that discriminate against minority groups or women, including unscored or casual interviews, unscored application forms, and unscored personal history and background requirements. Where there are data suggesting employment discrimination, a contractor may be required to present evidence concerning the validity of his unscored procedures regardless of whether tests are also used.

Sec. 60-3.14 stipulates that where substantially equally valid tests can be used for a given purpose, the contractor will be expected to use the test or battery of tests which will have the least adverse effect on the employment opportunities of minorities or women.

41 CFR Part 60-20

Sec. 60-20.2 requires that employers recruit employees of both sexes for all jobs, and that newspaper advertisements and other media for employment eliminate mention of sex preference unless sex is a bona fide occupational qualification. Advertisement columns headed "Male" and "Female" will be considered an expression of preference based on sex.

Sec. 60-20.3(a) requires that written personnel policies expressly indicate that there be no discrimination against employees based on sex.

Sec. 60-20.3(b) requires that qualified employees of both sexes have equal opportunity to any available job, unless sex is a bona fide occupational qualification.

Sec. 60-20.3(c) requires that the employer not make distinctions based on sex in conditions of employment, fringe benefits or employment opportunities.

Sec. 60-20.3(d) requires that the employer not make distinctions between married and unmarried persons, persons with young children and persons reaching certain ages for one sex and not the other.

Sec. 60-20.3(e) prohibits the employer from refusing to hire men or women for a particular job because there are no restroom or associated physical facilities.

Sec. 60-20.3(f)(1-2) prohibits an employer from denying a female employee the right to any job that she is qualified to perform in reliance upon a state "protective" law. Nor can such a law be used as a basis for establishing sex as a bona fide occupational qualification for a job.

Sec. 60-20.3(g)(1) requires that females not be penalized in their conditions of employment because they require time away from work on account of childbearing. Conditions of a leave for childbearing and the return to employment must be in accordance with an employer's leave policy.

Sec. 60-20.3(g)(2) stipulates that in the event an employer has no leave policy, childbirth must be considered justification for a leave of absence for a reasonable period of time. Upon her return, the female employee must be reinstated to her original job without penalty.

Sec. 60-20.3(h) requires that employers not specify any differences for male and female employees on the basis of sex in retirement age.

Sec. 60-20.4 requires that seniority lines and lists not be based solely on sex.

Sec. 60-20.5 requires that the employer's wage schedules not be based on the sex of the employee and that the employer not restrict one sex to certain job classifications.

Sec. 60-20.6 requires that the employer take affirmative action to recruit women to apply for those jobs where they have been previously excluded and to include women candidates in trainee programs leading to management positions.

PROPOSED RULES, 45 CFR PART 86, TO BE ADDED TO HEALTH, EDUCATION
AND WELFARE REGULATIONS PURSUANT TO TITLE IX
OF THE EDUCATION AMENDMENTS OF 1972

COVERAGE: Part 86 of 45 CFR contains the proposed regulations for Title IX. Title IX of the 1972 Education Amendments was effective July 1, 1972, and covers all institutions receiving federal monies by way of grant, loan or contract. Entirely exempt are military schools whose primary purpose is the training of individuals for military service and religious schools to the extent compliance would be inconsistent with governing religious tenets.

OVERVIEW: The proposed regulations for Title IX cover the three major areas of admissions, treatment of students and employment.

ADMISSIONS

COVERAGE: The regulations apply to vocational, professional and graduate schools and to institutions of public undergraduate education, except for traditional single-sex colleges; effective July 1, 1973.

PURPOSE: The regulations ensure students equal access to education opportunities, with certain exceptions specified in the law.

SUBSTANTIVE PROVISIONS:

Sec. 86.21(a) generally seeks to forbid denial of admissions and discrimination on basis of sex, except as provided in 86.15 and 86.16.

Sec. 86.21(b)(1) provides that in determining whether a person satisfies criteria for admission (1) no ranking of applicants on basis of sex, (2) no numerical limitations on persons by sex and (3) no differential treatment on basis of sex is permissible.

Sec. 86.21(b)(2) prohibits administration of tests or other criteria for admission which adversely affects any person on basis of sex unless such tests is shown to predict validly successful completion of education program or activity in question.

Sec. 86.21(c) states that, in determining whether a person satisfies criteria for admission:

(1) No rule concerning actual or potential parental, family or marital status of student or applicant which treats persons differently on basis of sex is permissible.

(2) No discrimination or exclusion on basis of pregnancy, childbirth, miscarriage, abortion or recovery therefrom is permissible.

(3) Pregnancy, childbirth, abortion, miscarriage or recovery therefrom shall be treated as temporary disability or physical condition.

(4) Preadmission inquiries as to marital status of applicants are not permissible. Sex inquiries are all right if made equally of both applicants and if information is not used to discriminate.

Sec. 86.22 prohibits preference in admission based on attendance at any educational institution or other entity which admits mostly or only one sex if such preference results in discrimination on the basis of sex.

Sec. 86.23(b) makes it illegal to recruit primarily or exclusively at schools admitting one sex.

DISCRIMINATION ON BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES PROHIBITED

COVERAGE: The regulations cover all aspects of all education programs or activities of a school district, institution of higher education or other entity which receives federal funds.

SUBSTANTIVE PROVISIONS:

Sec. 86.31(a) prohibits discrimination under any academic, extracurricular, research, occupational training or education program or activity operated by a recipient of federal financial assistance:

Sec. 86.31(b) states that recipients may not, on the basis of sex, provide any aid, benefit or service that:

- (1) Evaluates persons differently for provisions of aid, benefit or service

- (2) Provides aid, benefit or service in different manner
- (3) Denies anyone aid, benefit or service
- (4) Subjects anyone to separate rules of behavior or treatment
- (5) Discriminates in application of rules of appearance
- (6) Applies rule concerning domicile or residence of student or applicant
- (7) Aids discrimination by assisting person or agency which discriminates on basis of sex in providing any aid, benefit or service
- (8) Limits anyone in employment of right, privilege, advantage or opportunity.

Sec. 86.31(c) prohibits recipient of federal funds from requiring students, applicants or employees to participate in programs not wholly under its control (e.g., student-teaching assignments).

Sec. 86.31(c)(2) suggests that recipients should (1) develop and implement a procedure to ensure that this other program does not discriminate; (2) if it does, recipient should not require or permit such participation.

Sec. 86.32(a) prohibits differential housing allocations (e.g., fees, rules, requirements and so on).

Sec. 86.32(b) provides that housing may be (1) separate by sex, but (2) if so, must be (a) proportionate in quantity to numbers applying and (b) comparable in cost and quality.

Sec. 86.32(c)(1) prohibits different policies or practices concerning occupancy.

Sec. 86.32(c)(2) provides that listing with or assistance to other persons or agencies making housing available is all right only if housing is (a) proportionate for both sexes and (b) comparable in cost and quality.

Sec. 86.53 provides that comparable single sex facilities are all right (toilet, locker room, shower facilities).

Sec. 86.34 deals with access to education programs and activities, stating that:

(1) Sex may not be used as a basis for the provision of separate education courses and activities (or required or refused participation) such as health, physical education, industrial, business, vocational, technical, home economics, music and adult education.

(2) Local education agencies must not exclude on basis of sex anyone from admission to (a) a vocational education institution or (b) any other school or educational unit unless comparable facilities, services and courses are available.

(3) If tests are used for counseling students, different tests may not be used for students on basis of sex.

Sec. 86.35(a)(1) states that financial assistance to students may not be applied on the basis of sex as to amounts, type of assistance and so on; neither may recipient institution approve, list or support a foundation or agency which provides assistance to recipient's students on the basis of sex.

Sec. 86.35 (a)(2) excludes scholarships or fellowships which recipient administers established under a foreign will, trust, bequest or foreign government which discriminates by sex.

Sec. 86.35(b) requires that a recipient that assists any agency or person in making employment available to its students must (a) assure such employment is available without discrimination on basis of sex and (b) not service any agency, organization or person which discriminates on basis of sex in making available such employment.

Sec. 86.35(c) similarly states that if a recipient employs its students, it must do so without regard to sex.

Sec. 86.35(d) allows separate financial assistance as part of separate athletic teams for members of each sex if consistent with Sec. 86.38.

Sec. 86.36 prohibits discrimination in the provision of medical, hospital, accident or life insurance benefit, service, policy or plan. But this does not prohibit a recipient from providing a service or benefit which may be used by a different proportion of students of one sex than of another, including family planning services.

Sec. 86.37(a) prohibits the application of any rules that treat students differently on the basis of sex regarding actual or potential parental or family or marital status.

Sec. 86.37(b)(1) disallows the exclusion of any student from activity, program, class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, miscarriage, abortion or recovery therefrom, unless (1) the student requests voluntarily to participate in an alternate program or (2) the student's doctor certifies that alternate participation is necessary for physical and mental well-being.

Sec. 86.37(b)(2) requires that pregnancy and childbirth disabilities shall be treated under the same policies governing temporary disability in any medical plan in which recipient participates.

Sec. 86.37(b)(3) requires that where there is no provision for temporary disability (e.g., no policy held) or student does not otherwise qualify, pregnancy is to be treated as justification for leave of absence for a reasonable period of time upon expiration of which the student shall be reinstated to her original status.

Sec. 86.38(a) prohibits the exclusion of any student from participation in or benefits of or different treatment in physical education or athletics programs on the basis of sex. No recipient shall provide a physical education or athletic program on a separate basis provided that the recipient may operate or sponsor separate teams for members of each sex where selection is based on competitive skill.

Sec. 86.38(b) requires that at least annually a recipient must determine in what sports members of each sex would desire to compete.

Sec. 86.38(c) provides that where opportunities have been limited to members of a sex, a recipient should make affirmative efforts to (1) inform members of such sex of athletic opportunities equal to those available for other sex members and (2) provide support and training activities to improve their capabilities and interests to participate.

Sec. 86.38(d) states that affirmative efforts should be made to equalize athletic opportunities for both sexes.

Sec. 86.38(e) requires that where separate teams for members of each sex exist, no discrimination on the basis of sex is allowed in the provision of equipment or team supplies.

Sec. 86.38(f) states, however, that nothing here may be interpreted to require equal aggregate expenditures for athletics for members of each sex.

DISCRIMINATION ON THE BASIS OF SEX IN EMPLOYMENT IN EDUCATION
PROGRAMS AND ACTIVITIES PROHIBITED

COVERAGE: The regulations cover all employees in all institutions both full and part-time, except those in military and religious schools.

SUBSTANTIVE PROVISIONS:

Sec. 86.41(a)(1) states that no person on the basis of sex is to be excluded from participation or benefits or subject to discrimination in employment or recruitment, consideration or selection, whether full time or part-time, under any education program or activity operated by recipient receiving benefits from federal financial assistance.

Sec. 86.41(a)(2) provides that all employment agencies must further equal employment opportunity and must not limit, segregate or classify applicants by sex if such activity adversely affects employment possibilities.

Sec. 86.41(a)(3) prohibits any recipient from entering into any direct or indirect relationship which discriminates, e.g., unions, employment referral agencies or agencies providing fringe benefits to recipient's employees.

Sec. 86.41(b) applies to:

- (1) Recruitment, advertising and application for employment process
- (2) Hiring, upgrading, promotion, tenure, demotion, transfer, job layoff, termination and rehiring
- (3) Rates of pay and changes in compensation
- (4) Job assignments, classifications and structure

- (5) The terms of collective bargaining agreements
- (6) Granting and return from leaves of absence for any reason (including leaves for pregnancy and for persons of either sex to care for children or dependents)
- (7) Fringe benefits
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, tuition assistance, sabbaticals and leaves of absence to pursue training
- (9) All employer-sponsored activities, including social and recreational programs
- (10) Any other term or privilege of employment.

Sec. 86.42 provides that tests or other criteria which discriminate on basis of sex may not be used for an employment opportunity unless:

- (1) Such tests may be shown to predict validly successful performance
- (2) Alternative tests or criteria which do not discriminate are shown to be unavailable.

Sec. 86.43(a) states that comparable efforts must be made to recruit members of each sex for positions except where affirmative attempts shall be made to recruit members of a sex which previously had limited participation.

Sec. 86.43(b) prohibits recruitment at entities which tend to furnish applicants of one sex.

Sec. 86.44(a) prohibits policies that make distinctions in pay or compensation.

Sec. 86.44(b) prohibits policies that require a person to perform duties for which compensation is lower than that for a different position where (1) both entail similar duties or (2) the position description is limited to similar duties.

Sec. 86.44(c) forbids subjecting a person to a position description under which compensation is lower than that for performance under (1) a different position description entailing similar duties or (2) a different position entailing duties described in the position description.

Sec. 86.45(a) prohibits classification of jobs as being for males and females.

Sec. 86.45(b) prohibits separate lines of progression, tenure and seniority based on sex.

Sec. 86.45(c) prohibits acts in (a) and (b) above which operate to classify persons on the basis of sex unless sex is a bona fide occupational qualification as set forth in 86.51.

Sec. 86.46(a) deals with fringe benefits, including medical, hospital, accident, life insurance, retirement benefits, profit sharing and so on, stating that benefit plans may not:

(1) Be allocated differently on the basis of sex to employees and spouses, families and dependents

(2) Require unequal contributions or benefits on the basis of sex

(3) Establish different optional or compulsory retirement ages on the basis of sex for purposes of pension and retirement plans.

Sec. 86.47(a) forbids employment policies or actions that (1) treat persons differently with respect to marital, parental or family status or (2) are based on the employee's or applicant's being the head of household or principal wage earner.

Sec. 86.47(c) requires that pregnancies be treated as temporary disabilities for all job-related purposes, including disability incomes and the accrual of benefits, as well as the duration of disability leaves.

Sec. 86.47(d) provides that when an employer lacks a temporary disability policy or an employee does not qualify for a leave under such policy (e.g., insufficient accrued employment time), pregnancy shall be treated as justification for a leave of absence without pay. The employee shall be reinstated without penalty to her original position.

Sec. 86.47(e) forbids an employer to require that an employee commence a leave of absence related to pregnancy as long as her doctor certifies in writing that she is able to perform her duties, provided she notify her employer of her expected date of delivery at least 120 days prior to this date; neither can an employer require that a woman return to her employment after a leave related to pregnancy later than two weeks after the employee's physician certifies she is able to perform her duties, or in the case of a teacher, later than the beginning of the first full academic term commencing after such certification is made.

Sec. 86.48(a) states that this law must be obeyed even where state and local laws provide for differences and limitation in the employment of members of the two sexes.

Sec. 86.48(b) further states that any state law that provides benefits or services to members of one sex shall do the same for the other.

Sec. 86.49 forbids any reference to sex in advertising for a job in a limiting or discriminating manner unless sex is a bona fide occupational qualification for the particular job in question.

Sec. 86.50(a) forbids inquiries prior to employment as to the marital status of a job applicant.

Sec. 86.50(b) states that inquiries as to the sex of the job applicant are permissible only if made of all applicants, male and female alike.

Sec. 86.51 states that the prohibitions do not apply where sex may be shown to be a bona fide occupational qualification; i.e., where sex is essential to the successful operation of the job in question. Such consideration ought not reflect stereotyped preferences or characterization of the sexes. However, sex is relevant in locker room and toilet facilities employment.

TITLE VII (SEC. 799A) AND TITLE VIII (SEC. 845)
OF PUBLIC HEALTH SERVICE ACT AS AMENDED BY THE
COMPREHENSIVE HEALTH AND MANPOWER ACT AND THE
NURSE TRAINING AMENDMENTS ACT OF 1971

COVERAGE: Title VII and Title VIII were effective November 18, 1971, and cover all institutions receiving or benefiting from a grant, loan or interest subsidy to health personnel training programs by Department Regulation 45 CFR Part 83 and institutions receiving a contract under Title VII or VIII of the Public Health Service Act, e.g., schools of medicine, dentistry, veterinary medicine, podiatry, public health, optometry, pharmacy, osteopathy and nursing.

OVERVIEW: These laws prevent discrimination in the admission of students to a training program and ensure nondiscrimination in the application of program benefits. They also aim to secure nondiscrimination in all employment agencies related to employees working directly with applicant or program students.

SUBSTANTIVE PROVISIONS:

- (1) After discrimination is found, affirmative action may be required
- (2) Back pay may be awarded to employees
- (3) All agreements with labor organizations may not conflict with the nondiscrimination provisions of the legislation
- (4) Harassment of those filing complaints is prohibited.

Federal Statutory Scheme

Substantive Areas of Concern	Relevant Provisions of the Federal Statutory Scheme and Supporting Regulations	Source (s)	Coverage
I. Employment, Nondiscrimination in: A. Recruitment	1. The institution which is the contractor shall, as part of its affirmative action program, recruit and advertise for recruitment without regard to sex (for other elements of affirmative action as per regulations pursuant to EO 11246, see B(3) below).	EO 11246, Sec. 202 and 41 CFR Sec. 60-20.6 (pursuant to EO 11375)	All contractors, including educational institutions, with federal contracts over \$10,000
	(a) All solicitations and advertisements must clearly and specifically indicate that the contractor assures all applicants equal opportunity with regard to employment regardless of sex.	41 CFR Sec. 60-1.41 (pursuant to EO 11246)	Generally, institutions with government contracts over \$10,000 and their subcontractors
	(b) Notices must be posted at the work place clearly and specifically indicating equal opportunity for employment regardless of sex.	41 CFR Sec. 60-1.42	Same
	2. Institutions of higher education should make positive efforts to recruit from other institutions, academic and nonacademic, employing professional women, to avoid narrowing the field of potential females who fit any job description.	HEW Higher Education Guidelines pursuant to EO 11246	All contractors, including educational institutions, with federal contracts over \$10,000
	3. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female", will be considered unlawful preference based on sex.	29 CFR Sec. 1604.5 (pursuant to Title VII) [see also 41 CFR Sec. 60-20.2(b) (pursuant to EO 11375)]	All institutions with 15 or more employees, employment agencies, and labor unions ¹
	4. An employer shall make comparable efforts to recruit members of each sex, except that an employer shall make affirmative attempts to recruit members of a sex which previously had limited participation to overcome such limited participation.	45 CFR Sec. 86.43(a) (pursuant to Title IX) and 41 CFR Sec. 60-20.6(a) (pursuant to EO 11375)	All educational institutions. ² Generally, institutions with government contracts over \$10,000 and their subcontractors

5. An employer shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such action would have discriminatory effects.

45 CFR Sec. 86.43(b)
(pursuant to Title IX)

All educational institutions²

6. Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification (BFOQ).

41 CFR Sec. 60-20.2(a)
(pursuant to EO 11375)

Generally, institutions with government contracts over \$10,000 and their subcontractors

B. Hiring

1. Improper basis for failing or refusing to hire include:

29 CFR Sec. 1604.1(a)(1)
(pursuant to Title VII)

All institutions with 15 or more employees, employment agencies, and labor unions¹

(a) assumptions regarding comparative employment characteristics of women

(b) stereotyped characterizations of the sexes

Same

Same

(c) preference of employer, coworkers, clients or customers

Same

Same

(d) a desire to avoid paying minimum wages or overtime

29 CFR Sec. 1604.1(b)(3)

Same

(e) a desire to avoid providing separate restrooms for each sex as may be required by state law

29 CFR Sec. 1604.1(b)(5);
41 CFR Sec. 60-20.3(e)

Same
Generally, institutions with government contracts over \$10,000 and their subcontractors

2. Institutions which are contractors must conspicuously notify labor unions with which they have collective bargaining agreements of the equal employment requirements of EO 11246.

EO 11246, Part II,
Sec. 202(3)

All contractors, including educational institutions, with federal contracts over \$10,000

EO—Executive Order

CFR—Code of Federal Regulations

PHSA—Public Health Services Act of 1971

EPA—Equal Pay Act of 1963 as last amended in 1972

Title VII—Civil Rights Act of 1964 as amended

Titles VII and VIII—PHSA amended

Title IX—Education Amendments of 1972

45 CFR Part 86—Proposed rules under Title IX

Note: Because of their potential applicability to such a broad spectrum of women's rights issues, the Equal Protection Clause of the U.S. Constitution and 42 United States Code Sections 1983 and 1985 have not been included in this table. Provisions of the National Labor Relations Act and the Fair Labor Standards Act have also been omitted in preference to the more specific measures referenced herein.

¹Excluded from coverage are religious educational institutions with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by each institution of its activities.

²Excluded from coverage are military institutions whose primary purpose is the training of individuals for military service and religious schools to the extent compliance would be inconsistent with governing religious tenets.

Substantive Areas of Concern	Relevant Provisions of the Federal Statutory Scheme and Supporting Regulations	Source (s)	Coverage
B. Hiring (cont.)	3. Affirmative action plans re employment must be kept by all federal contractors in writing and must include:		
	(a) studies which monitor underutilization of females	41 CFR Sec. 60-2.11 (pursuant to EO 11246)	Any federal contractor or subcontractor with 50 or more employees and a contract of \$50,000 or more
	(b) establishment of reasonable, good faith employment goals and timetables	41 CFR Sec. 60-2.12	
	(c) development of equal employment opportunity policy in all personnel actions	41 CFR Sec. 60-2.13	
	(d) formal internal and external dissemination of policy	Same	
	(e) establishment of responsibilities for implementation of policy	Same	
	(f) identification of problems and objectives by organizational unit and job classification	Same	
	(g) action-oriented programs to eliminate deficiencies	Same	
	(h) internal and external audit procedures to monitor effectiveness of program	Same	
	(i) support of community action and service programs designed to improve employment opportunities for women	Same	
	(j) consideration of women not currently in workforce with requisite skills who can be recruited through affirmative action programs	Same	
	4. Hiring by institutions of higher education must be free from:	HEW Guidelines (pursuant to EO 11246)	All contractors, including educational institutions, with federal contracts over \$10,000
	(a) differential assignments of professional rank based on sex with discriminatory effect		

(b) presumptions about prospective employee's ability² to relocate based on sex

(c) discrimination based on sex disguised as university policy against hiring own graduates

5. The use of any test which adversely affects hiring of women is unlawful unless (a) the test has been validated and (b) the employer can demonstrate no suitable alternative for hiring.

29 CFR Sec. 1607.3
(pursuant to Title VII);
45 CFR Sec. 86.42
(pursuant to Title IX)
and 41 CFR, Part 60-3
(pursuant to EO 11246)

All institutions with
15 or more employees,
employment agencies,
and labor unions.¹
All educational
institutions.²
Generally, institutions
with government contracts
over \$10,000 and their
subcontractors

6. Employers may not follow state laws which discriminate against minors of one sex versus minors of the other sex in employment opportunity.

29 CFR Sec. 1604.1(b)(2)
(pursuant to Title VII)

All institutions with
15 or more employees,
employment agencies,
and labor unions¹

7. Back pay and affirmative action may be required if discrimination in employment practices is found.

Titles VII and VIII,
PHSA and
Sections 6(d)(3),
16 and 17, EPA

Medical, dental, etc.,
institutions receiving
federal training aid.
All public and
private institutions
and unions at all levels

8. An employer must not deny a female employee the right to any job that she is qualified to perform in reliance on a state "protective law" ("protective" as to nature of work, lifting requirements or hours).

41 CFR Sec. 60-20.3(b)
(pursuant to EO 11375)

Generally, institutions
with government contracts
over \$10,000 and their
subcontractors

¹Excluded from coverage are religious educational institutions with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by each institution of its activities.

²Excluded from coverage are military institutions whose primary purpose is the training of individuals for military service and religious schools to the extent compliance would be inconsistent with governing religious tenets.

Substantive Areas of Concern	Relevant Provisions of the Federal Statutory Scheme and Supporting Regulations	Source (s)	Coverage
C. Layoffs/ Terminations	1. Differential retirement ages may not be based on sex.	29 CFR Sec. 1604.9 (pursuant to Title VII) [see also 41 CFR Sec. 60-20.3(h) (pursuant to EO 11375)]	All institutions with 15 or more employees, employment agencies, and labor unions ¹
	2. Termination and leave policies must be free from any discrimination based on sex.	Title VII, EO 11246; Titles VII and VIII, PHSA; and Title IX	All institutions covered by the respective federal statutes and EO's <i>supra</i>
	3. Women shall not be penalized in conditions of employment because they require time away for childbearing; childbearing must generally be considered as justification for leave of absence for a reasonable time.	41 CFR Sec. 60-20.3(g) (pursuant to EO 11375)	Generally, institutions with government contracts over \$10,000 and their subcontractors
D. Job Classification	1. Employers may not premise discrimination based on sex on state laws which:	29 CFR Sec. 1604.1(b)(1) (pursuant to Title VII)	All institutions with 15 or more employees, employment agencies, and labor unions ¹
	(a) provide employment for females in certain occupations	Same; also 41 CFR 60-20.3(f) and (g) (pursuant to EO 11375)	Generally, institutions with government contracts over \$10,000 and their subcontractors
	(b) require lifting or carrying requirements in certain jobs		
	(c) limit employment of women to: (i) certain hours of the day (ii) certain numbers of hours per day or week (iii) certain periods of time before or after childbirth		
	2. Employers must not:	29 CFR Sec. 1604.3(a) (pursuant to Title VII) and 45 CFR Sec. 86.45 (pursuant to Title IX)	All institutions with 15 or more employees, employment agencies and labor unions. ¹ All educational institutions ²
	(a) classify jobs as male or female unless sex is a bona fide occupational qualification		
	(b) classify jobs as "light" or "heavy" to disguise sex-based classification	29 CFR Sec. 1604.3(b)	All institutions with 15 or more employees, employment agencies and labor unions ¹

	3. Institutions of higher education must merge or eliminate sex-segregated classifications such as "lecturer" and "research associate," so job classifications reflect the differences in actual duties performed.	HEW Guidelines (pursuant to EO 11246)	All contractors, including educational institutions, with federal contracts over \$10,000
E. Terms or Conditions	1. Institutions of higher education must not differentiate work assignments, facilities, research opportunities or teaching loads on basis of sex; nor may they deny females admission to faculty clubs or dining halls.	HEW Guidelines (pursuant to EO 11246)	Same
	2. Prime and subcontractor institutions must ensure unsegregated facilities including: (a) waiting rooms (f) parking lots (b) work areas (g) drinking fountains (c) restaurants (h) recreation areas (d) time clocks (i) transportation (e) storage or dressing areas (j) housing facilities for employees	41 CFR Sec. 60-1.8 (pursuant to EO 11246)	All contractors, including educational institutions, with federal contracts over \$10,000
F. Retaliation	1. An employer may not discriminate against one employee who opposes policies or practices which represent discrimination in employment based on sex.	Title VII, EO 11246; Titles VII and VIII, PHSA; and Title IX	All institutions covered by the respective federal statutes and EO's
G. Benefits	1. Employers may not discriminate on grounds state law discriminates by providing benefits, e.g., rest periods, to members of one sex only.	29 CFR Sec. 1604.1(b)(4) (pursuant to Title VII) and 45 CFR Sec. 86.48(b) (pursuant to Title IX)	All institutions with 15 or more employees, employment agencies, and labor unions. ¹ All educational institutions ²

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²Excluded from coverage are military institutions whose primary purpose is the training of individuals for military service and religious schools to the extent compliance would be inconsistent with governing religious tenets.

**Substantive Areas
of Concern**

**Relevant Provisions of the Federal
Statutory Scheme and Supporting Regulations**

Source (s).

Coverage

**G. Benefits
(cont.)**

2. Employers may not discriminate in any way in the granting, funding or administration of benefits such as:

- (a) medical, hospital, life insurance
- (b) retirement benefits, profit-sharing plans, bonuses
- (c) leave
- (d) any other privileges of employment

29 CFR Sec. 1604.9
(pursuant to Title VII);
45 CFR Sec. 86.46
(pursuant to Title IX);
HEW Guidelines and
41 CFR Sec. 60-20.3(c)
(pursuant to EO 11375)

All contractors, including educational institutions, with federal contracts over \$10,000. All institutions with 15 or more employees, employment agencies, and labor unions.¹ All educational institutions²

**H. Marital or
Premarital
Status and
Pregnancy**

1. An employer shall not adopt any rule or policy which forbids or restricts employment based on marital status, parental status or family status differentially as between men and women, including rules or policies geared to status as "principal wage earner" or "head of household."

29 CFR Sec. 1604.4(a)
(pursuant to Title VII);
45 CFR Sec. 86.47(a)
(pursuant to Title IX);
and 41 CFR Sec. 60-20.3(d)
(pursuant to EO 11375)

All institutions with 15 or more employees, employment agencies and labor unions.¹ All educational institutions.² Generally, institutions with government contracts over \$10,000 and their subcontractors

2. Regarding pregnancy:

(a) an employer shall not maintain a written or unwritten policy which excludes employees or applicants because of pregnancy

29 CFR Sec. 1604.10(a) and
45 CFR Sec. 86.47(b)

Same

(b) an employer shall treat disability arising from pregnancy, childbirth, abortion or miscarriage in all respects like other temporary disabilities

29 CFR Sec. 1604.10(b)
and 45 CFR Sec. 86.47(c)

Same

3. Institutions of higher education must maintain nondiscriminatory leave policies with regard to pregnancy and childbirth which:

HEW Guidelines
(pursuant to EO 11246)

All contractors, including educational institutions with federal contracts over \$10,000

(a) make such leaves available to all female employees

(b) make child care leaves available to men and women alike if the employer permits leaves for other personal reasons

I. Compensation

4. An employer shall not make preemployment inquiries based on marital status in discriminatory fashion.

45 CFR Sec. 86.50
(pursuant to Title IX)

All educational institutions²

1. In general, equal pay shall be provided for all jobs, regardless of sex, requiring equal skill, equal effort and equal responsibility.

EPA; Sec. 703(a)(1),
Title VII;
Sec. 202, EO 11246;
Titles VII and VIII,
PHSA; Title IX and
45 CFR Part 86
(pursuant to Title IX)

All institutions covered by the respective federal statutes and EO's

2. Wage classification and seniority systems must not be based on sex.

29 CFR Sec. 800.114
(pursuant to EPA) and
41 CFR Secs. 60-20.4 and
60-20.5
(pursuant to EO 11375)

All public and private institutions, at all levels, regardless of whether or not the institution is receiving federal funds.
Generally, institutions with government contracts over \$10,000 and their subcontractors

3. Patterns of wage discrimination concentrating employees of one sex in lower wage categories are unlawful.

29 CFR Sec. 800.115
(pursuant to EPA)

Same

4. Equal pay for equal work provisions of Equal Pay Act apply to:

29 CFR Sec. 800.116

Same

- (a) overtime
- (b) special assignments
- (c) vacation or holiday pay
- (d) contributions by employers to employee benefit plans
- (e) commissions

5. Labor unions representing employees of an employer may not engage in acts that cause or attempt to cause the employer to discriminate against an employee as to pay on the basis of sex.

Sec. 6(d)(2), EPA

Same

¹Excluded from coverage are religious educational institutions with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by each institution of its activities.

²Excluded from coverage are military institutions whose primary purpose is the training of individuals for military service and religious schools to the extent compliance would be inconsistent with governing religious tenets.

Substantive Areas of Concern	Relevant Provisions of the Federal Statutory Scheme and Supporting Regulations	Source (s)	Coverage
II. Admissions Nondiscrimination A. Criteria	1. An institution may not rank, apply quotas or practice differential treatment of applicants on the basis of sex. 2. An institution may not use any test or other criteria which adversely affects a person on the basis of sex unless test is valid predictor of success in activity or program. 3. An institution may not base admission criteria on (a) differential treatment on the basis of actual or potential family or parental status; (b) pregnancy, abortion, childbearing or recovery therefrom. 4. It is improper to treat pregnancy, etc., as anything but a temporary disability or physical condition or to make preadmission inquiries as to the marital status of an applicant. Sex inquiries are permissible if made equally of all applicants.	45 CFR Sec. 86.21(b)(1) (pursuant to Title IX) 45 CFR Sec. 86.21(b)(2) (pursuant to Title IX) 45 CFR Sec. 86.21(c)(1-2) 45 CFR Sec. 86.21(c)(3-4)	Under proposed rules, all provisions apply to vocational, professional and graduate schools and institutions of public undergraduate education except for traditional public single-sex colleges. The provisions do not apply to pre-school elementary and secondary schools, private undergraduate colleges, military institutions and religious schools to the extent that compliance would be inconsistent with religious tenets.
B. Preference	1. An improper preference in admission includes a preference in favor of applicants who attended institutions which admit mostly only one sex	45 CFR Sec. 86.22	
C. Recruitment	1. Recruitment efforts must be comparable for members of each sex (except where affirmative actions are required to be undertaken); it is improper for recruitment to be limited to schools admitting one sex.	45 CFR Sec. 86.23	
III. Education Program and Activities, Nondiscrimination in (Title IX) A. Provision of Aid, Benefits, Service	1. No institution which provides aid, benefits or services to any person may, on the basis of sex: (a) treat persons differently as to satisfaction of requirements (b) provide different aid, benefits, services (c) deny aid, benefits, services (d) subject persons to different rules of behavior (e) discriminate in the application of rules of behavior (f) aid or perpetuate discrimination based on sex by assisting any person, agency or organization which so discriminates 2. Any institution which requires, facilitates or permits participation by any applicant, student or employee, in an education activity operated by another shall adopt a procedure to ensure that the other does not discriminate on the basis of sex.	45 CFR Sec. 86.31(b) (pursuant to Title IX) 45 CFR Sec. 86.31(c)	Under proposed rules, all provisions apply to all education programs or activities of a school district, institution of higher education or other entity which receives federal funds for any of those programs. The provisions cover recipient pre-schools, elementary and secondary schools, vocational schools, colleges and

B. Housing

1. An institution may not, on the basis of sex, impose or provide different rules, regulations, fees, services or benefits related to housing, and, in particular, housing provided to one sex when compared to that provided to the other sex shall be:

- (a) proportionate in quantity to the number of students of the respective sexes
- (b) comparable in quality and cost

2. An institution shall take action to ensure proportionate quantity and comparable quality and cost in housing provided by another whom the institution solicits, lists and approves for that purpose.

45 CFR Sec. 86.32

universities at the undergraduate, graduate and professional levels, as well as other agencies, organizations and persons which receive federal funds for educational programs and activities

C. Comparable Facilities

1. Separate toilets, locker room and shower facilities must be comparable.

45 CFR Sec. 86.33

D. Access to Education Programs/Activities

1. An institution may not generally provide any course or education activity separately on the basis of sex (sex education courses not stated to be within this rule).

45 CFR Sec. 86.34(a)

Same

2. Local educational agencies may not exclude anyone on the basis of sex from admission to:

45 CFR Sec. 86.34(b)

Same

- (a) vocational education institutions
- (b) any other educational unit unless comparable facilities, services and courses are available

3. If tests are used for counseling, different tests may not be used on basis of sex.

45 CFR Sec. 86.34(c)

Same

E. Financial and Employment Assistance

1. An institution must not discriminate on the basis of sex as to the amount or type of eligibility for financial assistance to students, and must not aid or solicit any other group which does so.

45 CFR Sec. 86.35(a)

Same

2. An institution must take necessary action to ensure nondiscrimination by any group which it assists in making employment available to students.

45 CFR Sec. 86.35(b)

Same

F. Health and Insurance Benefits

1. An institution shall not discriminate on basis of sex in providing medical, hospital, accident or life insurance benefit or service.

45 CFR Sec. 86.36

Same

**Substantive Areas
of Concern**

**Relevant Provisions of the Federal
Statutory Scheme and Supporting Regulations**

Source (s)

Coverage

**F. Health and
Insurance
Benefits**

2. An institution shall not exclude or restrict any student from any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, miscarriage or recovery therefrom, unless the student or her physician specify to the contrary.

45 CFR Sec. 86.37(b)

H. Athletics

1. An institution may operate or sponsor separate teams for members of each sex where selection for such teams is based on competitive skill; otherwise, no person shall be excluded, denied, or treated differently as to physical education or athletic programs.

45 CFR Sec. 86.38(a)

2. Institutions must annually determine student interest in various sports for each sex.

3. Institutions must take affirmative action to inform, support and train members of a sex whose athletic opportunities previously have been limited.

45 CFR Sec. 86.38(b)

4. Institutions must not discriminate on the basis of sex in the provision of equipment or supplies for athletic teams.

45 CFR Sec. 86.38(c)

Under proposed rules, all provisions apply to all education programs or activities of a school district, institution of higher education or other entity which receives federal funds for any of those programs. The provisions cover recipient pre-schools, elementary and secondary schools, vocational schools, colleges and universities at the undergraduate, graduate and professional levels, as well as other agencies, organizations and persons which receive federal funds for educational programs and activities

12 Equal Rights for Women In EducationProvisions Not Included in Federal Statutory Scheme

Substantive Areas of Concern	Relevant Issues Not Included in Federal Statutory Scheme and Supporting Regulations	Selected Source(s) *	Coverage
I. Curriculum			
A. Instructional Material	Adopt material portraying contributions of women in history to national development; use material portraying more realistic characterizations of roles of men and women and avoid material portraying sexist characteristics labeled, such as dependency, passiveness, emotionalism, disinterest, fear and uncreativity; eliminate sole use of male personal pronoun in materials of instruction	U.S. Congress S 2518 (1973); Wash. Root report (1974); R.I. SB 367 (1974); Md. SB JR6 (1974); N.J. AB 173 (1974); Conn. HB 5636; Pa. 74-127 (1974)	Public primary and secondary schools**
B. Courses and Support Structure	Maintain feminist literature in all libraries; develop child care programs for children of staff, faculty and students to be used for the training of students in child care; provide a sex education course in human growth and development which includes interpersonal relations, sexism, emotional and physical growth	S 2518 (1973); Pa. Bd. of Ed. school administrators memo (1972)	Public primary and secondary schools
C. Teacher Training	Require student teachers seeking certification take a course in human relations which deals with sexism; require teacher manuals include material on male and female professional and vocational roles	Wis. State Dept. of Ed. Amend. to Ed. Code Sec. 9304 (1974); N.Y. Bd. of Regents policy and proposals (1972); Minn. <i>Infra</i>	Public primary and and secondary schools
D. In-service Training	Provide in-service training and workshops for teachers regarding the roles of women in American history; provide in-service training for teachers, counselors, administrators and supervisory personnel to recognize sex stereotyping; provide in-service training for teachers and guidance counselors, etc., to require them to take an active role in encouraging women to seek careers in fields related to their talents	N.J. AB 1703 (1974); Minn. Bd. of Ed. policy statement, "Eliminating sex bias in ed." (1972); N.Y. Bd. of Regents policy and proposals (1972)	Public primary and secondary schools

E. Community Education	Establish community education programs to enlighten parents on need to open up career opportunities for women	S 2518 (1973); N.Y. Bd. of Regents policy and proposals (1972)	Public primary and secondary schools
F. Career Vocational Programs	Recruit girls in technical fields and trades with the cooperation of guidance counselors. Expand vocational horizons of women through direct contact of girls with women in a variety of occupations utilizing visits to industries, government agencies, etc., where women are employed	S 2518 (1973); N.Y. Bd. of Regents policy and proposals (1972); Wash., D.C. Public Schools, "Protect Women" (1974)	Public primary and secondary schools
G. Women's Resource Center and Programs	Provide special programs for women whose education and careers were interrupted by marriage and family responsibilities and schedule courses at times convenient for women with families. Include subjects of special concern for women to improve understanding of female roles in our society and encourage research on the unpublished history of women. Establish women's centers for resocialization of women in their adult years	S 2518 (1973); Wash. Root report (1974); N.Y. Task Force on Equal Opportunities for Women (1973)	Colleges and universities
II. Employment			
A. Recruitment	Eliminate word-of-mouth hiring and "old boy" networks	Wash. Root report (1974)	All educational institutions
B. Job Classifications	Classify jobs for boys and girls as jobs for "minors" without reference to sex; eliminate the sole use of the male personal pronoun	Wash. Root report (1974); GA. HB 1875 (1974); Conn. HB 5636; Pa. 74-127 (1974)	All educational institutions
C. Hiring	Encourage the appointment of qualified women as superintendents, principals, college presidents and deans	N.Y. Bd. of Regents policy and proposals (1972)	All educational institutions

*The selected sources are intended to be illustrative rather than comprehensive. For more detailed information on innovative state educational policies, consult A Handbook of State Laws and Policies Affecting Equal Rights for Women in Education, published in March 1975 by the Equal Rights for Women in Education Project, Education Commission of the States, Denver, Colo.

**These provisions could be extended to include private educational institutions.

Substantive Areas of Concern	Relevant Issues Not Included in Federal Statutory Scheme and Supporting Regulations	Selected Source(s)*	Coverage
II. Employment (cont.)			
D. Terms or Conditions	Permit faculty members to continue their full faculty status with appropriate adjustments in salary during periods when family commitments temporarily limit abilities to teach full schedules; permit half-time employment where two persons share one job, each working on a half-time basis	Wash. Root report (1974); N.Y. Bd. of Regents policy and proposals	Colleges and universities
E. Benefits	Provide child care facilities for children of staff, faculty and students; provide before and after school programs for children of working parents	Pa. Bd. of Ed. school administrators memo (1972)	All educational institutions
III. Research			
A. Educational Status of Women	Formalize research program on women's educational status; research educational programs geared to determine needs and potential of women	S 2518 (1973); S.D. HB 793 (1974)	All educational Institutions
B. Curriculum Effectiveness	Measure student attitudes related to the equality of the sexes	Wash. Root report (1974)	Public primary and secondary schools**

*The selected sources are intended to be illustrative rather than comprehensive. For more detailed information on innovative state educational policies, consult A Handbook of State Laws and Policies Affecting Equal Rights for Women in Education, published in March 1975 by the Equal Rights for Women in Education Project, Education Commission of the States, Denver, Colo.

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